THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.7547 of 2006

Date: 01.09.2006

Between:

M/s Servicelinks International Ltd.,
Having its Corporate office at
H.No.8-3-945/A/12, Nagarjuna Nagar
Ameerpet, Hyderabad-73, rep.by its
Director

… Petitioner

And:

Government of India, rep.by its Secretary,
Ministry of Labour, New Delhi & 2 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.7547 of 2006

ORDER:

This writ petition is filed seeking a declaration that the action of the respondents in taking coercive steps against the petitioner and proposing to sell away the moveable properties of the petitioner for realization of the amounts allegedly due under the provisions of Employees Provident Fund Miscellaneous Provisions Act, 1952 (for shot 'The Act') as arbitrary and illegal.

2. The petitioner states that earlier, he filed W.P.No.24098 of 2005 seeking a declaration that the assessment order dated 03.06.2005 made by the 3rd respondent, as arbitrary and illegal and pending the said writ petition, this Court granted interim stay of operation of the said order, subject to depositing half of the amount assessed. Accordingly, the petitioner deposited half of the amount assessed under the order dated 3.6.2005. Ultimately, the said writ petition was disposed of by order dated 10.11.2005 granting liberty to the petitioner to prefer an appeal within two weeks and staying the operation of the order dated 3.6.2005 subject to condition of depositing half of the amount assessed. It is stated that though the petitioner has preferred an appeal, the same could not be taken up since there is no Presiding Officer in the Appellate Tribunal. It is pleaded that since the petitioner has already deposited half of the assessed amount in terms

of the interim order granted by this Court pending W.P.No.24098 of 2005, the respondents cannot take any coercive steps against the petitioner. It is alleged that in spite of the representation made by the petitioner on 16.3.2006 explaining the above facts, the respondents have been pressurizing the petitioner to pay further amounts, which is arbitrary and illegal. Hence this writ petition.

3. On behalf of the respondents, counter-affidavit has been filed. In para 3 of the counter-affidavit, it is stated as under:

> "I submit with regard to para Nos.2 to 31 of the affidavit that the petitioner was brought under the purview of the Employees Provident Fund and Miscellaneous Provisions Act 1952 (hereinafter referred to as the Act) under Code Number AP/41719 w.e.f.1.4.2001. And that as the petitioner failed to comply with the provisions of the Act, an enquiry u/s 7-A was initiated through summons dated 22.5.2002 fixing the enquiry on 11.6.2002. And that the same was adjourned to 5.7.2002 vide adjournment notice dated 13.6.2002. And that the petitioner while acknowledging said summons and adjournment notice requested, through representation dated 5.7.2002, some more time for implementation of the provisions of the Act. Thus the enquiry was further adjourned to 4.9.2002 vide adjournment notice dated 7.8.2002 which was acknowledged by the petitioner on 10.8.2002. And that none appeared on that day. Thus the enquiry was further adjourned to 29.10.2002 through adjournment notice dated 7.10.2002, which was also acknowledged by the petitioner, but none appeared. Thus the enquiry was further adjourned to several dates and as the petitioner failed to attend the enquiry, an exparte assessment was made through order dated 30.09.2003 as Rs.3,92,377/- for the period from 4/2001 to 4/2002. And that as the petitioner failed to pay the same, a prohibitory order date 13.1.2004 was issued to the State Bank of Hyderabad attaching the Account of the petitioner and that the SBH has remitted Rs.4,500/- available in the account of the petitioner through their letter dated 17.1.2004. And that a Recovery Certificate dated 1.4.2004 was issued to the recovery Officer to recover the dues along with upto dated interest total Rs.4,07,131/-. And that the recovery Officer issued notice of demand and attached the Moveable Properties of the petitioner on 2.9.2004. and that the petitioner

represented that they shifted their premises to a new place and hence requested some time to hand over the attached goods."

From the Counter-affidavit, it is clear that the petitioner – establishment was brought within the purview of the Act in the year 2001 itself and there was an assessment dated 30.09.2003 for the period from April 2001 to April 2002 after conducting the enquiry under Section 7-A of the Act. Nothing has been placed before this Court to show that the petitioner has deposited any amount towards that assessment, which remained unchallenged. May be that the petitioner has preferred an appeal against subsequent assessment dated 3.6.05 and also deposited half of the amount demanded. However, since the petitioner failed to comply with the earlier assessment dated 30.09.2003, I am unable to hold that the action of the respondents in taking steps for recovery of the said amount is either arbitrary or illegal. It is stated in the counter-affidavit that as per the Recovery Certificate dated 1.4.2004, the petitioner is liable to pay Rs.4,07,131/- for the period from April 2001 to April 2002.

Having regard to the facts and circumstances and keeping in view that the Appellate Tribunal is not functioning as on today for want of Presiding Officer, I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioner to prefer an appeal against the assessment dated 30.09.2003, within four (4) weeks from today. If any such Appeal is filed within the time specified above, the same shall be entertained and decided in accordance with law. It is further made clear that the order of assessment dated 30.09.2003 shall not be given effect to subject to the condition that the petitioner deposits half of the amount demanded under the Recovery Certificate dated 1.4.2004, within a period of Six (6) weeks from today.

The writ petition is disposed of accordingly. No costs.

G. ROHINI, J

Date: 01.09.2006

BSS